

Court Type of the State of New York
County: PART __

The People of the State of New York,

— against —

CLIENT,
Defendant-Petitioner.

[Ind./Dkt.] No. _____

Affirmation in Support of
Motion to Vacate the
Judgment of Conviction

LAWYER, ESQ., an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury that:

1. I am the attorney of record for Client. I am familiar with the facts of this case and make this affirmation in support of Mr. Client’s motion herein [Order of Assignment, attached as Exhibit 1, A. 1].¹

2. On Date, Mr. Client was convicted, after a jury trial, of [list offenses and Penal Law provisions]. Mr. Client was sentenced to a [determinate/indeterminate] term of [sentence including any PRS] [e.g., and was adjudicated a second felony offender] [Sentence and Commitment Order, attached as Exhibit 2]. Mr. Client [e.g., has/has not perfected his direct appeal]. Mr. Client [e.g., remains incarcerated pursuant to this judgment].

3. I make this affirmation in support of Mr. Client’s motion to vacate the judgment of conviction, pursuant to CPL 440.10 (1) (h), on the ground that he was

¹ Citations beginning with “A.” refer to pages of the appendix provided in connection with this motion; those preceded by “H.” refer to minutes of the pretrial hearing on DATE; those preceded by “Tr.” refer to minutes of the trial from DATE to DATE; and those preceded by “S.” refer to minutes of the sentencing on DATE.

denied the right to the effective assistance of counsel where defense counsel failed to: [\[list defense counsel errors here\]](#) (see US Const, Amends VI, XIV; NY Const, art I, § 6; *Strickland v Washington*, 466 US 668 [1984]; *People v Baldi*, 54 NY2d 137 [1981]; see also *People v Benevento*, 91 NY2d 708 [1998]).

4. The following exhibits are annexed hereto and made a part of the Motion to Vacate the Judgment of Conviction:

- Exhibit 1 is a copy of the [\[e.g., Order of Assignment\]](#);
- Exhibit 2 is a copy of the [\[e.g., Sentence and Commitment Order\]](#);
- Exhibit 3 is a copy of [\[e.g., Dr. Name Affidavit\]](#);
- Exhibit 4 is a copy of [\[e.g., Dr. Name Curriculum Vitae\]](#);
- Exhibit 5 is a copy of [\[e.g., Affidavit of Client\]](#);
- Exhibit 6 is a copy of [\[e.g., Affirmation of Mr. Prior Lawyer\]](#); and
- [\[etc.\]](#).

5. Unless otherwise specified, all statements of fact in this affirmation are made upon information and belief, based on a review of the record on appeal, including the trial exhibits; the court file; documents received from and communications with trial defense counsel [Mr. Prior Lawyer](#); communications with [\[family members, experts, and/or any other professional who has provided information that supports this motion or an affidavit for this motion\]](#); and communications with [Mr. Client](#).

6. [Mr. Client](#) reserves the right to supplement this motion upon the discovery of additional evidence that supports his legal claims.

FACTUAL AND PROCEDURAL BACKGROUND

7. [\[Introductory paragraph—summarizing the argument with most salient case details and discussing defense counsel’s errors.\]](#)

A. The Crime and Investigation

8. [Paragraph(s) describing the crime using dates and details.]

9. [Paragraph(s) describing the investigation of the crime using dates and details.]

B. Pre-Trial Proceedings

10. [Paragraph(s) with dates and details on pre-trial proceedings, including but not limited to the suppression hearing, to the extent that these proceedings are relevant to the argument.]

C. Trial

11. [Paragraphs with dates and details about the trial and the evidence presented at the trial. This section may include, but is not limited to, the prosecution's case, the defense case, the charge conference, any ancillary proceedings during the trial, closing statements, and anything that occurred during jury deliberations.]

12. [If relevant, paragraph(s) with dates and details about the sentencing proceeding. Write out your client's sentence.]

D. [e.g., The Direct Appeal and Prior Post-Conviction Litigation]

13. [If the direct appeal has been perfected, include this section with dates and details. Otherwise, leave this section out.]

14. [If applicable, you should also discuss any other post-conviction motion(s), including prior CPL 440 motion(s), that your client has filed and state whether they were filed with or without counsel.]

E. The Instant Motion

15. Mr. Client respectfully requests this Court vacate the judgment of conviction, pursuant to CPL 440.10 (1) (h), on the ground that he was denied his right to the effective assistance of counsel. Mr. Client's trial counsel was ineffective under both the federal and state constitutions (see US Const, Amends VI, XIV; NY Const, art I, § 6; *Strickland*, 466 US at 687; *Baldi*, 54 NY2d at 146; see also *Benevento*, 91 NY2d at 713-14).

a. [e.g., Expert Affidavit]

16. [Include this section if you are including an expert affidavit with your motion. See example paragraph below.]

17. From Date through Date, undersigned counsel consulted with Dr. Name, Title at Work Place,² requesting that Dr. Name provide an overview and summary of psychological research on factors that [fill in details here] [Dr. Name Affidavit, attached as Exhibit 3].

18. In her report, Dr. Name underscored that [fill in big-picture conclusion here].

19. Dr. Name detailed that [fill in details of report and opinions here and in the following paragraphs].

² Dr. Name [e.g., holds a Ph.D. in psychology from the University of School (1992)]. [Discuss details of work experience, including any experience testifying as an expert witness, any authoring of articles or books on topic of expertise, etc.] [Dr. Name Curriculum Vitae, attached as Exhibit 4].

b. [e.g., Client's Affidavit]

20. [Include this section if you are including an affidavit from your client with the motion. See example paragraph below.]

21. On Date, Mr. Client signed an affidavit for this motion [Affidavit of Client, attached as Exhibit 5]. [Include details from your client's affidavit.]

c. [e.g., Trial Defense Counsel's Affirmation]

22. [Include this section if you are including an affirmation from trial defense counsel with the motion. Note: if trial defense counsel refused to submit to you a signed affirmation, you should include details of your conversation with counsel as to his recollections of the case and any reasoning for the decisions he made that are relevant to the errors that you are alleging. You should also document trial counsel's refusal to provide an affirmation.]

23. On Date, Mr. Prior Lawyer, Mr. Client's trial defense counsel, signed an affirmation related to his recollections of his representation of Mr. Client at trial [Affirmation of Mr. Prior Lawyer, attached as Exhibit 6].

24. Trial defense counsel stated that [fill in details from the affirmation or quote relevant sections from the affirmation].

25. Where defense counsel was ineffective for his prejudicial failures to: [list errors here], Mr. Client's Motion to Vacate the Judgment of Conviction should be granted (*see* CPL 440.10 [1] [h]). In the alternative, a hearing should be ordered to resolve any disputed issues of fact (*see* CPL 440.30 [5]).

Dated:

Date
City, New York

Signature

[Attorney], Esq.
[Office Name]
[Office Address]
[Work Email]
[Work Phone]